

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

ELEANOR DACHTLER, an individual,
Plaintiff,

2:10-CV-00963-LRH-GWF

v.

ORDER

ALBERT ANDERSON, an individual;
PRUDENTIAL LIFE INSURANCE
COMPANY OF AMERICA a/k/a OFFICE OF
SERVICEMEMBERS' GROUP LIFE
INSURANCE; DOES I through X, inclusive;
and ROE CORPORATIONS I through X,
inclusive,
Defendants.

Before the court are Defendant Prudential Insurance Company of America's ("Prudential") motion to dismiss (#5¹), Plaintiff Eleanor Dachtler's opposition and counter-motion to amend the complaint (##9-10), and Prudential's reply in support of its motion to dismiss and response to the motion to amend (##13-14).

I. Facts and Procedural History

This action involves a dispute over life insurance benefits paid by Prudential under a Servicemembers' Group Life Insurance ("SGLI") policy, provided through the Servicemembers'

¹Refers to the court's docket entry number.

1 Group Life Insurance Act (“SGLIA”), 38 U.S.C. §§ 1901, *et seq.* The SGLIA was enacted in 1965
2 to ensure the availability of life insurance coverage to uniformed service members on active duty,
3 particularly in combat zones. *See Ridgway v. Ridgway*, 454 U.S. 46, 50 (1981). The government
4 is the policyholder and purchases insurance coverage from commercial insurers on behalf of the
5 service members. *Id.* at 51.

6 Nicholas Anderson (“Nicholas”), a U.S. Marine who was killed while deployed in Iraq, is
7 the insured in this case. On March 10, 2004, prior to his deployment, Nicholas completed an SGLI
8 election form designating his divorced parents, Eleanor Dachtler (“Dachtler”) and Albert Anderson
9 (“Anderson”), as primary beneficiaries. Nicholas also designated his half brother, Jackson
10 Anderson, as a contingent beneficiary. Dachtler alleges that the March 10 SGLI was completed in
11 Nicholas’ own hand and was duly submitted to the proper persons or department within the Marine
12 Corps. Furthermore, on the same day, Nicholas filled out and submitted a Record of Emergency
13 Data form further designating his parents as co-beneficiaries of his life insurance policy.

14 Twelve days later, on March 22, 2004, a second SGLI election was submitted to the Marine
15 Corps designating Anderson as the sole principal beneficiary and designating Dachtler as the sole
16 contingent beneficiary. Nicholas’ half brother was removed as beneficiary altogether. That same
17 day, a second Record of Emergency Data form was also submitted that removed Dachtler as a co-
18 beneficiary of Nicholas’ life insurance policy. Dachtler alleges that neither of the March 22 forms
19 were written in Nicholas’ hand, do not match the handwriting on the March 10 forms, and were
20 falsified and forged by Anderson or by individuals under Anderson’s direction.

21 On November 12, 2004, Nicholas was killed while serving his country in Iraq. At the time
22 of his death, Nicholas had no spouse or issue, nor any will or trust. Two days after Nicholas’
23 death, Anderson filed a claim for death benefits under Nicholas’ SGLI policy. Relying on the
24 allegedly falsified March 22 SGLI election form, which listed Anderson as the sole primary
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1 beneficiary, Prudential paid \$500,000 in death benefits to Anderson on November 16, 2004.

2 Dachtler did not submit a claim for benefits and received nothing.

3 In April 2009, Dachtler filed the underlying action against Anderson in Nevada state court.

4 On May 18, 2010, Dachtler filed a first amended complaint adding Prudential as a co-defendant

5 and asserting against Prudential claims for negligence, negligent performance of an undertaking,

6 and constructive trust, all under Nevada law. On June 18, 2010, Prudential removed the action to

7 federal court. Doc. #1. On July 16, 2010, Prudential filed the instant motion to dismiss,

8 contending that Dachtler's claims against Prudential are preempted and barred under 38 U.S.C.

9 § 1970(b) and, alternatively, that her allegations fail to state a claim under Nevada law. Doc. #5.

10 On August 9, 2010, Dachtler filed an opposition and counter-motion to amend the complaint to add

11 a claim against Prudential for violation of § 1970. Doc. ##9-10. On September 1, 2010, Prudential

12 filed a reply in support of its motion to dismiss and a response to Dachtler's motion to amend.

13 Doc. ##13-14.

14 **II. Prudential's Motion to Dismiss**

15 **A. Legal Standard**

16 Defendants seek dismissal pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure

17 to state a claim upon which relief can be granted. To survive a motion to dismiss for failure to

18 state a claim, a complaint must satisfy the Federal Rule of Civil Procedure 8(a)(2) notice pleading

19 standard. *See Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1103 (9th Cir. 2008). That

20 is, a complaint must contain "a short and plain statement of the claim showing that the pleader is

21 entitled to relief." Fed. R. Civ. P. 8(a)(2). The Rule 8(a)(2) pleading standard does not require

22 detailed factual allegations; however, a pleading that offers "'labels and conclusions' or 'a

23 formulaic recitation of the elements of a cause of action'" will not suffice. *Ashcroft v. Iqbal*, 129

24 S. Ct. 1937, 1949 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

1 Furthermore, Rule 8(a)(2) requires a complaint to “contain sufficient factual matter,
2 accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Id.* at 1949 (quoting
3 *Twombly*, 550 U.S. at 570). A claim has facial plausibility when the pleaded factual content allows
4 the court to draw the reasonable inference, based on the court’s judicial experience and common
5 sense, that the defendant is liable for the misconduct alleged. *See id.* at 1949-50. “The plausibility
6 standard is not akin to a probability requirement, but it asks for more than a sheer possibility that a
7 defendant has acted unlawfully. Where a complaint pleads facts that are merely consistent with a
8 defendant’s liability, it stops short of the line between possibility and plausibility of entitlement to
9 relief.” *Id.* at 1949 (internal quotation marks and citation omitted).

10 In reviewing a motion to dismiss, the court accepts the facts alleged in the complaint as
11 true. *Id.* However, “bare assertions . . . amount[ing] to nothing more than a formulaic recitation of
12 the elements of a . . . claim . . . are not entitled to an assumption of truth.” *Moss v. U.S. Secret*
13 *Serv.*, 572 F.3d 962, 969 (9th Cir. 2009) (quoting *Iqbal*, 129 S. Ct. at 1951) (brackets in original)
14 (internal quotation marks omitted). The court discounts these allegations because “they do nothing
15 more than state a legal conclusion—even if that conclusion is cast in the form of a factual
16 allegation.” *Id.* (citing *Iqbal*, 129 S. Ct. at 1951.) “In sum, for a complaint to survive a motion to
17 dismiss, the non-conclusory ‘factual content,’ and reasonable inferences from that content, must be
18 plausibly suggestive of a claim entitling the plaintiff to relief.” *Id.* (quoting *Iqbal*, 129 S. Ct. at
19 1949).

20 **B. Federal Preemption**

21 Prudential principally contends that the SGLIA bars Dachtler from recovery against
22 Prudential and preempts Dachtler’s state law claims for negligence, negligent performance of an
23 undertaking, and constructive trust as inconsistent with the SGLIA.

24 Because the SGLI policy at issue is a federal contract issued pursuant to a federal statute,
25 distribution of benefits under that policy is governed by federal law. *See Prudential Ins. Co. of*
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1 *Am. v. Athmer*, 178 F.3d 473, 475 (7th Cir. 1999); *Prudential Ins. Co. of Am. v. Neal*, 768 F. Supp.
2 195, 197-98 (W.D. Tex. 1991). Further, “the controlling provisions of the SGLIA prevail over and
3 displace inconsistent state law.” *Ridgway*, 454 U.S. at 60. Accordingly, the court must determine
4 whether Dachtler’s state law claims against Prudential are inconsistent with, and therefore
5 preempted by, the SGLIA.

6 The payment of benefits under an SGLI policy is expressly governed by 38 U.S.C. § 1970.
7 Subsection (a) provides that death benefits “shall be paid, upon the establishment of a valid claim
8 therefor, . . . in the following order of precedence:” first, to the beneficiaries designated in writing
9 by the insured, or if there is no designated beneficiary, then to the insured’s widow, children,
10 parents, executor or administrator, or next of kin, in that order. 38 U.S.C. § 1970(a). Furthermore,
11 subsection (b) bars recovery against the insurer by any person who is otherwise entitled to benefits
12 where that person has failed to make a claim for benefits within one year of the insured’s death and
13 the insurer has already paid the benefits to claimants in the order of precedence. It states:

14 If any person otherwise entitled to payment under this section does not make claim
15 therefor within one year after the death of the member or former member, or if
16 payment to such person within that period is prohibited by Federal statute or
17 regulation, payment may be made in the order of precedence as if such person had
18 predeceased the member or former member, and any such payment shall be a bar to
19 recovery by any other person.

20 *Id.* § 1970(b). In accordance with the plain language of the statute, courts have denied recovery
21 against the insurer where persons who would have otherwise been entitled to benefits under the
22 order of precedence failed to make a claim within one year and the insurer had made payment to
23 another claimant. See *Gates v. United States*, 481 F.2d 850, 854 (5th Cir. 1973); *Wright v.*
24 *Prudential Ins. Co. of Am.*, 551 S.W.2d 697, 699 (Tenn. 1977). In *Gates*, the Fifth Circuit held that
25 the decedent’s father had an “affirmative duty” of making a claim within a year and his failure to
26 do so constituted a bar to recovery against the insurer, despite the fact that his ex-wife had
perpetrated a fraud against him in obtaining the full amount of their son’s death benefits. *Gates*,
481 F.2d at 854.

1 Accepting as true Dachtler's allegations regarding the validity of Nicholas' March 10
2 election form and the invalidity of the allegedly forged March 22 form, Dachtler was entitled to
3 make a claim for benefits under § 1970(a) as a designated primary beneficiary. Nonetheless, under
4 the express terms of § 1970(b), Dachtler's failure to make a claim within one year of Nicholas'
5 death, coupled with Prudential's payment of benefits to Anderson in the order of precedence as if
6 Dachtler had predeceased Nicholas, constitutes a bar to recovery against Prudential by Dachtler.
7 *See Gates*, 481 F.2d at 854; *Wright*, 551 S.W.2d at 699.

8 Contrary to Dachtler's argument, the fact that Prudential paid Anderson within four days of
9 Nicholas' death does not affect the operation of the statutory bar at this late date. "There is nothing
10 in [§ 1970(b)] that requires the insurer to wait one year before paying the policy proceeds in order
11 to rely upon payment as a bar to recovery by any other person." *Wright*, 551 S.W.2d at 699. The
12 plain language of § 1970(b) imposes two independent prerequisites: (1) the putative beneficiary
13 fails to make a claim within one year or is legally prohibited from receiving payment; and (2) the
14 insurer makes payment in the order of precedence as if the putative beneficiary had predeceased
15 the insured. The fact that payment is made earlier than one year after the insured's death is
16 inconsequential; it neither advances application of the statutory bar, nor prevents it from applying
17 after the passage of one year. Thus, Prudential's payment to Anderson four days after Nicholas'
18 death did not alone discharge Prudential's liability; rather, Prudential remained subject to liability
19 for claims subsequently made by an entitled beneficiary. *See Rice v. Office of Servicemembers'*
20 *Grp. Life Ins.*, 260 F.3d 1240, 1244, 1246 (10th Cir. 2001) (holding that the SGLIA creates an
21 implied private right of action against the insurer in a case where the plaintiff had sought payment
22 from the insurer after the insured's death); *Parker v. Office of Servicemembers' Grp. Life Ins.*, 91
23 F. Supp. 2d 820, 825 (E.D. Pa. 2000) (same). But given Prudential's payment to Anderson, it was
24 Dachtler's failure to make a claim within a year of Nicholas' death that ultimately triggered the bar
25 to recovery against Prudential. *See Wright*, 551 S.W.2d at 699.

1 The court also rejects Dachtler's argument that the statutory bar in § 1970(b) is subject to
2 the exception that no person should be permitted to profit from their own wrongdoing. That
3 equitable principle, commonly known as the "slayer's rule," has long been applied as a federal
4 common law exception to the order of precedence set forth in § 1970(a) to prevent murderers of
5 insureds from recovering their victims' life insurance benefits. *See, e.g., Athmer*, 178 F.3d at 475;
6 *Prudential Ins. Co. of Am. v. Tull*, 690 F.2d 848, 849 (1982); *Shoemaker v. Shoemaker*, 263 F.2d
7 931, 932 (6th Cir. 1959) (involving the predecessor to the SGLIA); *Prudential Ins. Co. of Am. v.*
8 *Tolbert*, 320 F. Supp. 2d 1378, 1380 (S.D. Ga. 2004); *Neal*, 768 F. Supp. at 198. The *Neal* court
9 even concluded that the slayer's rule is a proper application of § 1970(b), which expressly
10 authorizes the insurer to skip a person in the order of precedence if that person is prohibited from
11 receiving benefits by federal statute or regulation. 38 U.S.C. § 1970(b) ("if payment to such
12 person within that period is prohibited by Federal statute or regulation, payment may be made in
13 the order of precedence as if such person had predeceased the [insured]"). The slayer's rule has
14 *not* been applied, however, as an exception to § 1970(b)'s statutory bar to recovery against the
15 insurer. Whereas the purpose of the slayer's rule is to deny benefits to wrongdoers, § 1970(b)'s
16 statutory bar protects the insurer against double payment on late claims. Section 1970(b) "is
17 designed primarily for the protection of the insurer, not potential claimants." *Neal*, 768 F. Supp. at
18 199-200. Thus, while the slayer's rule might be invoked in Dachtler's suit against Anderson to
19 establish his alleged lack of entitlement to benefits and to recover benefits wrongfully received, *cf.*
20 *id.* at 198, it has no application to Dachtler's attempt to recover against Prudential, which can claim
21 the benefit of the statutory bar. *See Gates*, 481 F.2d at 854.

22 Dachtler is correct that the court in *Neal* allowed recovery by beneficiaries who failed to
23 make a claim within one year of the insured's death, notwithstanding the statutory bar § 1970(b).
24 *See id.* at 199-200. But the facts of *Neal* are easily distinguished, and the court's reasoning
25 undermines Dachtler's position in this case. The *Neal* court refused to apply the statutory bar not
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1 because the slayer's rule provided an exception, but because the statutory bar did not apply in the
2 first place. As in all the other slayer's rule cases cited in the preceding paragraph, the insurer in
3 *Neal* had not yet paid out the life insurance benefits and filed an interpleader action seeking the
4 court's resolution of competing claims. Thus, the *Neal* court rejected application of § 1970(b)'s
5 statutory bar because "by its terms the provision of the statute dealing with failure to make a claim
6 does not apply to a case like this one, in which no payment has been made." *Id.* at 200. The court
7 further reasoned that a contrary interpretation of § 1970(b) would lead to the "absurd result[]" that
8 every potential claimant in the order of precedence would be barred from recovery. *Id.* What the
9 court did *not* conclude, however, was that the slayer's rule had any impact on the operation of the
10 statutory bar to recovery against the insurer.

11 In a suit against the insurer, fraud by one beneficiary against another in the recovery of
12 SGLI death benefits does not excuse the second's failure to make a claim within the statutory
13 period. *See Gates*, 481 F.2d at 854. That is not necessarily to say that the victim of the fraud is
14 without relief in an action against the perpetrator, who received benefits to which the other was
15 entitled. But the only issue presently before the court is whether Dachtler may recover against the
16 insurer. Pursuant to the express terms of § 1970(b), the court holds that she may not.

17 Given that federal law expressly bars recovery against Prudential in this case, Dachtler's
18 state law claims seeking recovery of the benefits under Nicholas' SGLI policy are in direct conflict
19 with federal law and are therefore preempted. *See Parker*, 91 F. Supp. 2d at 825; *see also*
20 *Ridgway*, 454 U.S. at 60. Accordingly, Dachtler's claims against Prudential will be dismissed
21 without prejudice.

22 **III. Dachtler's Motion to Amend**

23 Rule 15(a) of the Federal Rules of Civil Procedure provides that a party may amend a
24 pleading once "as a matter of course" before a responsive pleading is served. Fed. R. Civ. P. 15(a).
25 If a responsive pleading has been filed, "a party may amend its pleading only with the opposing
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1 party's written consent or the court's leave." Fed. R. Civ. P. 15(a)(2). Leave to amend shall be
2 freely given "when justice so requires." Fed. R. Civ. P. 15(a)(2); *Jones v. Bates*, 127 F.3d 839, 847
3 n.8 (9th Cir. 1997); *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 185 (9th Cir. 1987).

4 "In exercising its discretion 'a court must be guided by the underlying purpose of Rule 15 –
5 to facilitate a decision on the merits rather than on the pleadings or technicalities.'" *DCD*
6 *Programs*, 833 F.2d at 186 (quoting *United States v. Webb*, 655 F.2d 977, 979 (9th Cir. 1981)).
7 Rule 15's policy of favoring amendments to pleadings should be applied with "extreme liberality"
8 insofar as the motion to amend is not sought in bad faith, does not cause undue delay, does not
9 cause the opposing party undue prejudice, and does not constitute an exercise in futility. *Id.* The
10 party opposing the amendment bears the burden of showing prejudice. *Id.* at 187.

11 Dachtler requests leave to file a proposed second amended complaint, which is identical to
12 Dachtler's first amended complaint except for the addition of an additional claim against Prudential
13 for violation of 38 U.S.C. § 1970. *See* Doc. #9, Ex. 17, p. 11. Based on the above analysis,
14 however, Dachtler's factual allegations fail to state a claim against Prudential under § 1970.
15 Indeed, rather than provide Dachtler with a cause of action against Prudential, under the facts of
16 this case the express terms of the statute serve as "a bar to recovery" against Prudential. 38 U.S.C.
17 § 1970(b). Thus, Dachtler's proposed amendment would be futile, and leave to amend will be
18 denied without prejudice.

19 **IV. Conclusion**

20 For the foregoing reasons, Dachtler's claims against Prudential to recover life insurance
21 benefits under her son's SGLI policy are preempted and barred under the SGLIA, 38 U.S.C.
22 § 1970.

23 IT IS THEREFORE ORDERED that Defendant Prudential's Motion to Dismiss (#5) is
24 GRANTED. Prudential is hereby dismissed as a defendant from this action.

1 IT IS FURTHER ORDERED that Plaintiff's Countermotion to Amend Complaint (#10) is
2 DENIED.

3 IT IS SO ORDERED.

4 DATED this 23rd day of February, 2011.

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LARRY R. HICKS
UNITED STATES DISTRICT JUDGE
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